OBSERVATIONS

Made in *England*, on the Trial of Captain *Green*, and the *Speech* at his Death.

THO there is not one ſingle Man now in *England* who was preſent at the Tryal of Capt. *Green*; tho the Tryal is not yet Printed in *Scotland*, being almoſt Thirty Sheets of Paper; and tho we have yet no other Account of it but from Partial Scraps of Letters, or the impertinent and lame Relations of ſhatter Brain'd News-Mongers; yet the Incendiaries that blow the Coal between the Two Nations, have been ſo very ſucceſsful in raiſing a Ferment and Rage in this Nation, againſt all *Scots-Men* promiſcuouſly, whether concern'd or not concern'd in that Tryal, that it ſeems to be to very little purpoſe to recommend Temper and Moderation: So unaccountably does the Blind Violence of Paſſion ſhew it ſelf Deaf to all Reaſon, tho in a Country where *Moderation* is the word in Vogue, and ſo highly talk'd of.

But I hope the Feaver is not Univerſal, and therefore to ſuch as have *Ears to hear*, I would beg leave to offer ſome few Plain Queſtions and Obſervations.

In the firſt place, Wou'd it not be more agreeable both to Equity and Wiſdom to ſuſpend our Judgments till we ſee the Tryal, in all its Particulars? From that alone we can judge of the

Justice or the Injustice of the Sentence: If the Judges have done Wrong, they are answerable; and, in God's Name, let them Account for it: But why such a Violent Flame and Resentment against a whole Nation for what has been done by the *Queen*'s Privy-Council, and her Judges in *Scotland*, who are made at St. *James*'s?

The Common People even at *Edinburgh* did nothing, either before or during the Tryal, to Frighten or Influence the Judges: And as to what happen'd after it, tho no Man on Earth is less for the Government of the Mob, which is always Mad, and Scandalous, and Pernicious; yet so far I may safely say in this Point, That if the Judges and the Privy-Council found Captain *Green* Guilty, it is no great wonder if the *People* thought he deserv'd to be punish'd; tho I am far from Justifying their tumultuous manner of expressing it.

But whatever this Mob at *Edinburgh* did to press the Execution, how can this Affect the whole Kingdom? But of all things, how can the *Scots*, who are scattered up and down in *England*, or serve in the Fleets and Armies, be imagin'd to be Concern'd in it? How few of them knew any thing of the Matter, or meddled so much as to give their Opinion of it, in point of Speculation? And indeed no Man of Common Sense or Justice can do it, without seeing and considering all the Articles of the Indictment distinctly; every word of the Depositions clearly and fully; the *Presumptions* adduced to Fortify or Weaken the Depositions and the Accusation; and all the *Pleadings* on both sides; all which we shall have in the printed Tryal. The Judges themselves cannot Determine, till they have heard all this, and shall we at a distance, and with so very lame Accounts, have a Greater *Privilege* than the Judges? For my part, I neither condemn Capt. *Green*, nor the Judges and the *Queen's Privy-Council*. I suspend my Judgment, till I can give it with Knowledge and Impartiality.

There is One Fundamental Error in the whole Matter. It is the Vulgar Notion that if Capt. *Drummond* and his Crew are alive, Capt. *Green* is Innocent; which is the greatest Mistake imaginable. The Indictment does not so much as mention Capt. *Drum-*

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Drummond, but only in so far as the words of some of Capt. *Green's* own Crew in their Conversations, are repeated in the Indictment, as one part of the Grounds of Enquiry and Tryal. He is Indicted for *Piraty*, and in particular for taking a Ship with such Colours, at such a *Place*, and of so many *Guns*, sail'd by *Whites*, who spoke *English*. It is very true, it was the general Suspicion that this was *Drummond's* Ship, and a great many groundless Reports were either foolishly or villanously spread among the People, and written up to *London*; but the Counell and the Judges did not regard the Fictitious or Imaginary part: They went upon the Fair and Legal Foundation.

If Capt. *Green* committed any Piracy whatsoever, he is Tryable in any Country upon the Globe where-ever he is seiz'd, by the Law of Nations. A *Pirate* is a declared Enemy to Mankind, who has renunc'd his Allegiance to his own Country and Government; And therefore he meets his Judges wherever he is taken. *Pirates* of all Nations are Tryed in *England*; and since *Scotland* is a Sovereign State on the same Island, it has as just a Right of the Sea, and a Power of Admirality. If there were the least Occasion of Doubting, in this point, the Right Reverend and Learned Bishop of *Carlisle* has made it appear, that by the antient Leagues and Treaties between the Two Kingdoms, the *Scots* Ships were not to Strike to the *English*, nor the *English* to the *Scots*. But the Sovereignty, whilst at Sea, is not the present Question. Every Kingdom upon Earth has the Right and Power of Admirality within it self, and *Pirates* of all Nations are Try'd in all Countries whatsoever,

Nor can the Depositions of Witnesses be very particular as to the persons on whom *Piracies* are Committed. All possible Haste is made to dispatch the Business, and to get rid of the Crew they have taken one way or another. Every one sees the Colours of the Ship, and her Bulk and Figure, and Guns, and may know the Language of the Crew; But they do not much trouble their Heads to enquire into their Age, or Names, or where they were Born. Such particular Enquiries would look very Suspicious to a Captain that goes on such an Expedition; and if it were possible,

it would be certainly his Interest, to shut both the Eyes and Ears of all his Crew, for fear of Discovery. All is Fish that comes to Net, without any Nicety about particulars.

If Capt. *Green* was a Pirate in any Case, he was an open Enemy to *Scotland* and all Nations; and if it was not he that took *Drummond*'s Ship, it was for no other Reason, but because it did not come in his way; and it seems some other of his own Nation did: But in the Eye of the Law, it is the same thing whose Ship soever he took. He that takes One, would take a Hundred, and of a hundred Nations: For which Reason, wherever he is found, he is treated as a Common Enemy, and in no Nation in the World more Strictly than in *England*.

So that all Affidavits, to prove *Drummond* and his Crew to be alive, yea, tho' *Drummond* were at *Charing-Cross*, or at the Cross of *Edinburgh*, are of no weight against the Justice of the Judges, if it is true that the Depositions make Captain *Green* Guilty of any Piracy whatsoever. Of which I suspend my Judgment, till my Eyes can satisfy me.

But withall, it is to be observ'd that, tho' in the Printed Case of Captain *Green*, written here at *London*, a considerable Number of Affidavits; and Declarations of Persons concern'd in the *East-India* Companies, are huddl'd all together very Artificially, as if they had been Offer'd to the Judges at the Tryal; yet the most part of them were not sent into *Scotland* till after the Sentence, and some of them not till after the Execution.

But supposing all of them had been sent in due time, yet what weight in Law have any Affidavits that are taken by the Mayor of *Portsmouth*, or any other particular Subject of *England*, without a Power and Authority from the Queen or Captain *Green*'s Judges? Do the Judges of *England* proceed in that Manner, in the Tryal of any *Scots-Man* in *England*? Or indeed any Judges in any other Country, in this matter of Probation by Legal Witnesses.

For my part, I lay the greatest Weight, as to my own private Opinion, on Capt. *Green*'s going out of this World Denying all Piracy. I have a great Charity for Dying Persons, if they have any Sense of Religion. But then, on the other hand, since that is

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no general Rule, nor consider'd in the World as a Demonstration of Innocence, I must still suspend my Judgment. How many go to *Tyburn* daily, denying the Facts that are evidently prov'd against them? Did not all those who were executed for the *Popish Plot*, go to Death denying, with the most solemn and Sacred Asseverations? Did the *People* of *England* at that time believe them therefore to be Innocent, or the Judges to be Murtherers, even tho' Dr. *Oates* had then begun to appear to be Dr. *Oates*? Or, to come to a Case that has a nearer Relation to our present purpose, pray what Confession did Captain *Kid* or his Accomplices make at their Execution?

One part or the other of Captain *Green*'s Crew are guilty of Notorious Villany. Either those who have Sworn as Witnesses, and confess'd as Criminals, or those who go to Death Denying. Now where is the Man upon Earth can say positively which of them are the Knaves, and which of them the Honest Men?

There is no Country under the Sun where the Prisoner has fairer play for his Life than he has in *Scotland*. He has full time to prepare his Defences. He is allowed Councel to Plead, even before finding the Indictment, or (as they expres it in *Scotland*) as to the *Relevancie* of the *Libel*, or the *Relevancie* of the Indictment. All Objections against Witnesses in the Tryal, are fully heard and canvass'd. The Advocates for the Prisoner are allow'd to Speak last, or to have the last Word in Pleading, which is no small Advantage; and the Judge makes no Speech to Influence the Jury. The Matter is wholly left to their own Integrity. Capt. *Green* had Seven Lawyers to plead for him, of his own Chooſing: And we do no hear it Complain'd of, that any one of them came short of his Duty. The Judges proceeded with the outmost Patience, and Time and Deliberation. And those whom the Queen join'd to them, as *Assessors* on this Occasion, are Men of Estates and intire Reputation.

If Captain *Green*'s Crew are Rogues, and false Witnesses, they are Rogues of his own bringing, and who can search their Hearts? Not one of the Witnesses is a *Scots-man*: And such *Scots-men* as were with him, and accused of the same Crime, have been tried

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and punished with the same Impartiality. If any indirect Practices had been us'd, to corrupt any of the Crew, to be sure they would have begun with their own Country-men, and yet none of them pretended to say any thing like it.

The Incendiaries have bellow'd it about, and a great many are bubled in to believe it, that Capt. *Green* was condemn'd on no other Evidence than that of the *Blacks*, and that all that the Surgeon deposes, is only from Hear-say: But the Contrary of both, will fully appear from the Trial. And even in the Copy that is printed here, of the Surgeon's Deposition, tho the selling of the Ship, and some such other Particulars, are but by Hear-say, and his hearing the Guns shall be called Hear-say too, if you please: But his seeing another Ship at Captain *Green*'s Stern, as having submitted; and when he came aboard again, his seeing Bales of Goods on the Deck, which were not in the Ship before, and of which they would give no Account; his seeing and dressing the Wounds of the Seamen, *&c.* I suppose such things fall not under the Denomination of Hear-say. And indeed, if the Surgeon speaks the Truth, and is not perjur'd, there cannot be more evident Facts and Demonstrations.

If the Seamen had wounded one another, what imaginable Reason can be given, that the Surgeon, who was the most concern'd to know how they had got their Wounds, and was to heal them, should be the only Man in the Ship from whom this was to be kept as a mighty Secret? and if the Goods had come by lawful Means, or by a Miracle, what Occasion could there be to make it a Mystery?

I do not deny that *Blacks* may be perfidious; but pray where is the Nation that can throw the first Stone at them? Do not too many *Christians* shamefully outdo both *White* and *Black* Infidels in all the horrid Excesses of Perjury and Barbarity? Did not Captain *Green* trust these *Blacks* aboard his Ship with his own Life daily? Or did he give any Proofs of their Infidelity? Do the Judges of *England* reject the Depositions of *Blacks* in Trials at their Bars, especially when they are become *Christians*, and the Captain and the Crew have fairly trusted them? Now both these Circumstances concur in our

Case

Case, and the *Black*, who is most disputed, was not only become, but had been bred a Christian. The Apostle says, that the *People* of *Crete*, are always Lyars: Shall there be therefore no Judicatory, no Witnesses, nor *Probation* amongst the Inhabitants of that Island? Such general Propositions are meant only as to a great part, but not universally, nor without very good Reasons given against the particular *Persons*.

If it were not writ so positively from *Scotland* that Captain *Green* went to death denying the Speech that was printed there in his Name gives great ground of Suspicion. Whosoever made that Speech, I'll Swear is a *Scots-man*; for his Tongue betrays him. We'll allow the Law Terms of *Repelling* and *Exculpation*, &c. because that may be supposed to be somewhat necessary. But is there a Dray-man or a Fruit Woman in *England* that will talk of *shooting Powder*, ------*give in a particular Condescendance of time and place* ----- *was educat in the Church of* ----- *Maugre, Spite and Calumny* ---- *humor the malicious Plot* ---- *how the Witnesses were practised, God knows* ------ *&c.* These and such other *Peculiar Phrases* are Demonstrations that the Speech was not made by any *English-man*, whatsomever. And if Captain *Green* said that it was made by him, and gave it as such, which I cannot believe, it would be a very evident *Proof* of his want of Sincerity.

But I take the Case to be plainly this; Captain *Green* did in general deny all *Piracy* at his Death, and his Lawyer dress'd up a Speech according to his own Fancy, in his own Language, and for his own Vindication: For he is the real Heroe of the Tragedy, and the Speech is calculated rather for himself, than the poor dying Man, who it is suspected was amused to the fatal Moment, with the Hopes of being reprived.

Upon the whole Matter, I have a great Charity, on the one side, for the Words of a dying Man, who has any thing of a good Character, as I find Captain *Green* has; and on the other hand, I have a great Charity for the *Judges* and the Queen's *Privy Council*, whose Consciences and Honour were at Stake; who knew they were to bear the Blame of whatever should be amiss, and who had no Tentation of Interest, either privat or National, to byas them, for the Ship was confiscated by way of Reprisal, before

fore the Criminal Proceſs commenced. And therefore, till at leaſt I ſee the whole Trial, I ſuſpend my Opinion.

I hope what I have fairly obſerved, may have ſome weight with thoſe who are not blindly hurried away into Paſſion without Thinking. The weakeſt Heads grow ſooneſt giddy, & are moſt eaſily turned and carried away by the Rapidneſs of a Torrent. The *People* have been juſtly compared by the Ancients, to the Winds; to the Sea; to a Flock of Sheep; *ſequitur non quo eundum eſt, ſed quo Itur.* I am ſorry for whatever enflames the Miſunderſtanding between the two Nations. All good Men will ſurely do every thing that is reaſonable to prevent a Diviſion.

The violent Reproaches, and Threatnings of *Maſſacring*, and God knows what, that fly about againſt all *Scots-Men* promiſcuouſly, are but very diſmal Preſages, if they are not wiſely remedied.

Are they Conſiſtent with the common Rules of Chriſtianity, or with Juſtice or Honour? Are they Conſiſtent with the Common Rules of Prudence, unleſs *Adrian*'s Wall were Rebuilt, with greater Strength and Security? Are they Conſiſtent with the Deſigns or *Propoſals* of Union, by which, as I think, it can be demonſtrated, *England* can reap more Advantages than *Scotland*? Are they Conſiſtent with the *Queen*'s Service or the common Intereſt? Or, *Laſtly*, Have the Incendiaries a Deſign to make ſo many Brave Troops at Land, and ſo many Faithful Seamen, who have diſtinguiſhed themſelves in all our Victories, abandon and deſert the Service?

Theſe *Boutefeux* are the Ruin of all Nations. But I leave ours to the Conſideration of the Government, and the Wiſdom of the Nation. I ſhall only add what *Socrates* ſaid to an *Athenian* Incendiary, who threaten'd him in theſe Terms, *The Athenians*, ſaid he, *Socrates, will deſtroy thee, when they are once got into a Fury.* *Socrates* anſwer'd him, *Ay but they'll ſerve thee that Sawce when they are out of a Fury.*

FINIS.

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